

## MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement is made by and between Brigham Young University, a Utah non-profit corporation and educational institution with its principal campus and place of business located at Provo, Utah 84602, and \_\_\_\_\_ (“Company”) located at \_\_\_\_\_;

WHEREAS, the parties to this Agreement desire to disclose certain information by each of the parties to each other for the purpose of evaluating \_\_\_\_\_ technology, discussing recommendations and future development;

WHEREAS, pursuant to the above, the parties may desire to disclose to each other certain of their proprietary information pertaining to the above, which information the parties regard as Confidential Information. This disclosure is not an offer for sale.

NOW, THEREFORE, for and in consideration of the mutual obligations contained herein, the parties intending to be legally bound hereby agree as follows:

1. For the purpose of this Agreement Confidential Information shall mean any and all documentation, technology, information, data, specifications, plans, software, systems, processes, methods, devices and products of a confidential nature, including but not limited to proprietary know-how, intellectual property, computer programming techniques, and all record bearing media containing or disclosing such information and techniques which are disclosed pursuant to this Agreement.
2. This Agreement shall be effective as of the date of the last signature as written below and will continue for a period of three (3) years. Either party may terminate this Agreement at any time without cause on thirty (30) days written notice. However, the confidentiality obligations accruing prior to termination as set forth herein shall survive for a period of three (3) years from the date of the receipt thereof by the receiving party.
3. The parties agree that disclosure and receipt of Confidential Information with one another is for the purposes set forth above and for no other purpose.
4. All Confidential Information exchanged between the parties pursuant to this Agreement:
  - (a) shall, if in written physical form, be marked “Confidential” or similarly legended by the disclosing party before being turned over to the receiving party or shall, if in oral or intangible form, be orally identified as “Confidential” at the time of disclosure and subsequently be reduced to writing and sent to the other with a legend of “Confidential” within thirty (30) days of such oral disclosure;
  - (b) shall not be copied or recorded in any manner without prior written approval of discloser, nor shall it be distributed, disclosed, or disseminated in any way or form by the receiving party to anyone except its own employees or consultants bound by the terms and conditions of this Agreement, who have a reasonable need to know said Confidential Information;
  - (c) shall be treated by the receiving party with the same reasonable degree of care to avoid disclosure to any third party as is used with respect to the receiving party’s own information of like importance which is to be kept secret;
  - (d) shall not be used by the receiving party for its own purposes or any other purpose except the purpose set forth above, except as otherwise expressly stated herein, without the express written permission of the disclosing party.
5. The obligations of paragraph 4 shall not apply, however, to any information which:
  - (a) is already in the public domain or becomes available to the public through no breach of this Agreement by the receiving party;
  - (b) was lawfully in the receiving party’s possession prior to receipt from the disclosing party;
  - (c) is received independently from a third party free to lawfully disclose such information to the receiving party;
  - (d) is subsequently independently developed by the receiving party; or
  - (e) is required by applicable law or ordered disclosed by a court of competent jurisdiction, regarding which, recipient will give notice to disclosing party prior to responding.
6. Confidential Information shall not be deemed to be in the public domain merely because any part of said information is embodied in general disclosures or because individual features, components or combinations thereof are now or become known to the public.
7. All Confidential Information shall remain the property of the disclosing party and be destroyed and so certified or returned (along with all copies thereof) (a) upon completion of the relationship in connection with which such Confidential Information was acquired; or (b) within fifteen (15) days of receipt by the receiving party of a written request from the disclosing party setting forth the Confidential Information to be returned.
8. Either party shall have the right to refuse to accept any information under this Agreement, and nothing herein shall obligate either party to disclose to the other party any particular information. Neither party shall have any obligations to enter into any further agreement with the other.
9. The parties hereto agree that no warranties of any kind are given with respect to Confidential Information disclosed under this Agreement as well as any use thereof, except as otherwise expressly provided for herein.
10. No party shall acquire any intellectual property rights under this Agreement. It is understood that no patent, copyright, trademark, or other proprietary right to license is granted by this Agreement. The disclosure of Confidential Information and Materials which may accompany the disclosure shall not result in any obligation to grant the receiving party rights therein.
11. Each party warrants and represents that it possesses all necessary powers, right and authority to lawfully make disclosures subject to this Agreement.
12. Each party acknowledges that damages for improper disclosure of Confidential Information may be irreparable; therefore, the injured party is entitled to seek equitable relief, including injunction, preliminary injunction and legal costs, in addition to all other remedies.
13. The obligations and duties imposed by this Agreement with respect to any Confidential Information may be enforced by the discloser of such Confidential Information against any and all recipients of such Confidential Information
14. This Agreement shall be deemed performed in and shall be construed and governed by the laws of the State of Utah, excluding its Conflicts of Laws provisions.
15. This Agreement does not create any agency or partnership relationship. This Agreement will not be assignable or transferable without the prior written consent of the other party. All additions or modification to this Agreement must be made in writing and must be signed by all parties.

### BRIGHAM YOUNG UNIVERSITY:

By: \_\_\_\_\_  
(Signature) (Date)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature) (Date)

### COMPANY:

By: \_\_\_\_\_  
(Signature) (Date)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature) (Date)